

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LARS CAVI,

Plaintiff,

v.

EVOLVING SYSTEMS NC, INC.,
RATEINTEGRATION, INC., AND
THOMAS THEKKETHALA,

Defendants.

Civil Action No. 15-1211-RGA

MEMORANDUM ORDER

Presently before the Court is Plaintiff's Motion for Partial Summary Judgment on the Falsity and Materiality Elements of Count XIII. (D.I. 95).

Count XIII of Plaintiff's amended complaint alleges that Defendants violated the North Carolina Securities Act, N.C. Gen. Stat. §§ 78A-1 *et seq.*, 78A-8, 78A-56(a)(2), and the Securities Exchange Act of 1934, Section 10(b) and Rule 10b-5 thereunder, by making various misrepresentations and omissions in connection with the purchase and sale of Defendant RateIntegration's common stock. (D.I. 24 ¶¶ 391-454).

Plaintiff moves for summary judgment on the falsity and materiality elements¹ of that count as to two written representations. (D.I. 96 at 4). The first is a January 10, 2009 email sent to Plaintiff by Defendant Thekkethala. (*Id.*). The second is a "Compensation Model" spreadsheet, which also appears to have been provided to Plaintiff by Thekkethala. (*Id.*).

¹ Falsity and materiality are elements of Plaintiff's claims brought pursuant to the federal securities laws, *see McCabe v. Ernst & Young, LLP*, 494 F.3d 418, 424 (3d Cir. 2007), and the North Carolina Securities Act, *see Piazza v. Kirkbride*, 785 S.E.2d 695, 709 (N.C. Ct. App. 2016).

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

Having reviewed the briefing and the evidence provided by the parties, I find the evidence presented as to the relevant context to be sufficiently ambiguous such that I cannot decide the elements of falsity and materiality as a matter of law. In other words, I am uncertain that granting partial summary judgment to Plaintiff is warranted.

Accordingly, **IT IS HEREBY ORDERED** that Plaintiff’s motion (D.I. 95) is **DENIED**.

Entered this 1 day of ^{June}~~May~~ 2018.


United States District Judge